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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 709

J. H. WOOD AND J. H. KNOWLTON, APPELLANTS,

vs.

T. S. LOVETT, JR.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ARKANSAS

FILED JANUARY 31, 1941.

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[fol. 1] IN. SUPREME COURT OF ARKANSAS.

No. 4-6059

J. H. WOOD & J. H. KNOWLTON, Appellants,

vs.

T. S. LOVETT, JR., Appellee

PRAECIPE FOR RECORD—Filed December 21, 1940

To the Clerk of the Supreme Court of Arkansas.

SIR:

You will please prepare a transcript of the record to be transmitted to the Supreme Court of the United States in pursuance to the appeal heretofore taken in this case and included therein the following:

The Amended Complaint—Transcript 5-8.

Separate Answer of J. H. Wood—Tr. 12-15.

Separate Answer of J. H. Knowlton—Tr. 16-20.

Amendment to the Answer of J. H. Wood and J. H. Knowlton—Tr. 23-24.

Testimony of T. S. Lovett, Jr., and exhibits thereto Tr. 28-36.

Testimony of N. D. Newton—Tr. 39-46.

Deed from Geo. W. Neel, Commissioner of State Lands to J. H. Wood, Tr. 158-159.

Deed from Geo. W. Neal, Commissioner of State Lands to J. H. Knowlton, Tr. 162-163.

Decree of the Desha Chancery Court—Tr. 165-168.

Order of the Supreme Court of Arkansas, affirming the Decree of the Desha Chancery Court.

Opinion of the Supreme Court of Arkansas.

Petition for rehearing.

Order overruling Petition for rehearing.

Petition for Appeal.

Assignment of Errors.

Jurisdictional Statement.

Order allowing Appeal.

Supersedeas Bonds of J. H. Wood and J. H. Knowlton.

[fols. 2-3] Citation to T. S. Lovett, Jr.

Notice of Service.

Praecipe.

Index.

(S.) J. G. Burke, Counsel for Appellants.

Service of above Praecipe is hereby acknowledged this
19th day of December, 1940.

(S.) A. J. Johnson, Counsel for Appellee.

[File endorsement omitted.]

[fol. 4] IN CHANCERY COURT OF DESHA COUNTY

T. S. LOVETT, JR., Plaintiff,

vs.

J. H. KNOWLTON, JAMES WOOD, G. C. HARRIS, ALMA FLYNN,
Tom Fuller, John Fuller, Eseau Knowlton, Henry Brooks,
Pat Thompson and John Muckaway, Defendants

AMENDED COMPLAINT

For his cause of action the Plaintiff states:

That he is the owner of the following lands situated in Desha County, Arkansas, to-wit:

Northwest Quarter (NW $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section Eight (8); South Half of Southwest Quarter (SW $\frac{1}{4}$) of Section Eight (8); the West Half (W $\frac{1}{2}$) of Section Seventeen (17), all in Township Seven (7) South Range Two (2) East; also a parcel of land described as beginning at a post standing ten chains west of section corner to sections 17, 18, 19 and 20, Township 7 South, Range 2 East; thence South 26.67 chains to a stake; Thence East 30 chains to a post; thence North 26.67 chains to Section line between said sections 17 and 20; thence West along said section line 30 chains to place of beginning, eighty (80) acres, more or less.

That he acquired title from the Alliance Trust Company in 1939 by proper deed of conveyance which appears of record in Record 77, page 55 of Desha County Records. These grantors acquired title from A. Knowlton and wife by foreclosure of a deed of trust executed by A. Knowlton and

wife, which deed of trust appears of record 47 at page 62 of Desha County Records, and received therefor a commissioner's deed which deed is recorded in Record 49 at page 473 of the Desha County Records; and that predecessors in title have owned and occupied the said lands, paying taxes thereon and improving same for almost a century.

[fol. 5] That the defendant G. C. Harris, is claiming an interest in the following lands, to-wit:

Northwest Quarter (NW $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section Eight (8) Township Seven (7) South Range Two (2) East,

by virtue of a deed from the State Land Commissioner dated April 26, 1938, based on a forfeiture in 1933 and a deed made to the State Land Commissioner on such sale to the State, said Deed having been made in 1936.

That the defendant, J. H. Knowlton, is claiming the following described lands of this plaintiff, to-wit:

The East Half (E $\frac{1}{2}$) of Northeast Quarter (NE $\frac{1}{4}$) of Section Nineteen (19); North part of West Half (W $\frac{1}{2}$) of Northwest Quarter (NW $\frac{1}{4}$) of Section Twenty (20) and East Half (E $\frac{1}{2}$) of Southwest Quarter (SW $\frac{1}{4}$) of Section Seventeen (17), all in Township Seven (7) South, Range Two (2) East,

by virtue of a deed from the State Land Commissioner based upon a forfeiture to the State of Arkansas for non-payment of the taxes for the year 1932; all of which lands were sold to the State of Arkansas in 1933 and deeded to the State of Arkansas in 1936 and by the State to the defendant, Knowlton, in 1936.

That the defendant, J. H. Wood or James Wood, is claiming the following described lands of this plaintiff, to-wit:

South Half (S $\frac{1}{2}$) of Southwest Quarter (SW $\frac{1}{4}$) of Section Eight (8); Northwest Quarter (NW $\frac{1}{4}$) of Section Seventeen (17); West Half (W $\frac{1}{2}$) of Southwest Quarter (SW $\frac{1}{4}$) of Section Seventeen (17), all in Township Seven (7) South, Range Two (2) East,

by virtue of two deeds from the State Land Commissioner, the first dated July 29, 1936, and the second March 21, 1938, both of which are based upon a purported and alleged forfeiture of said lands for non-payment of the taxes for the year 1932 and a sale thereof by the State of Arkansas in

[fol. 6] 1933 and a deed to the State Land Commissioner in 1936.

That plaintiff states that all of said sales to the State of Arkansas, the certification of these lands to the State Land Commissioner by the County Clerk of Desha County and the deeds to the defendants above named are illegal and void and constitute a cloud upon his title and should be cancelled and set aside and removed by the judgment of this Court.

That this plaintiff has tendered to each of these defendants their taxes paid, with interest and costs, and the same has been refused; that the said forfeiture, tax sale and the deeds of these defendants and each of them are void and illegal for the following reasons:

(1) The vote of the electors of the school district in which the lands were situated was not certified by the proper officials to the Levying Court and the levying of school taxes, therefore, was not made by the Levying Court and the school tax was illegal and void.

(2) The County Clerk did not prepare, make-out and deliver a tax book to the Collector of Desha County in the time and manner required by law, with his warrant attached thereto authorizing the Collector to collect taxes for the year 1932, as required by law.

(3) That the Assessor did not subscribe the Oath as prescribed by 13623, 13624 of Pope's Digest of the Statutes of Arkansas, in assessing property of Desha County for the year 1932.

(4) That the Collector failed to file a verified list of lands on which he failed to collect taxes in 1933 with the Clerk as required by Section 13845 of Pope's Digest.

(5) That the Clerk failed to scrutinize carefully the list of delinquent lands and compare the same with the tax book and record of tax receipts and strike from the list and tracts of lands or town lots upon which taxes shall have been paid or which does not appear to be entered on the tax book or that appears from *from* the tax book exempt [fol. 7] from taxes and certify said list as correct.

(6) That the Clerk of Desha County did not cause the list of delinquent lands as corrected to be published for two weeks between the second Monday in May and the second

Monday in June of 1933 in some newspaper published in Desha County as required by law.

(7) That no notice of sale of lands was given by the Clerk and second said notice as required by law.

(8) That no record was made of the delinquent list of lands returned delinquent in 1933 for the taxes of 1932.

(9) That no printed notice was kept posted about the clerk's office for a period of one year as required by law.

(10) That the lands herein are not properly described in said notice of sale and were not assessed for taxation for the year 1932 nor were taxes extended against said lands for the year 1932, under and proper description.

The Plaintiff states that these defendants occupied this land for part of the years 1937 and 1938 and had the benefit of rent for said years and that a reasonable rent for said lands would be Five Dollars (\$5.00) per acre; that he asks that the proper cultivated acreage be determined and he have credit for the rents against the taxes and judgment for the balance.

Plaintiff asks that the defendants Alma Flynn, Tom Fuller, John Fuller, J. H. Knowlton, Eseau Knowlton, Henry Brooks, Pat Thompson and John Muchaway be summoned to answer what interest, if any, they have in said lands.

That pending this litigation plaintiff prays that a receiver be appointed to rent said lands and collect rentals from said lands for the year 1939 and hold same subject to the orders of this Court.

The property is largely improved, there is a number of [fol. 8] houses on it, that it has been in cultivation for a long number of years and it would be some loss to this plaintiff and others if not put in cultivation during the year 1939, and to this end a Receiver should be named.

Wherefore, plaintiff prays that on final hearing he have judgment cancelling the title of these defendants, setting them aside as clouds on his title, judgment for the rents for the years they have occupied the same, and confirmation his title to said lands and such other relief as in a Court of Equity he is entitled.

(Signed) A. J. Johnson, Attorney for Plaintiff.

[fol. 9] IN CHANCERY COURT OF DESHA COUNTY

[Title omitted]

SEPARATE ANSWER OF J. H. WOOD—FILED MAY 13, 1939

The defendant, J. H. Wood, for his separate answer to the complaint herein filed, as amended, states:

He denies that plaintiff is the owner of the lands described in the complaint, or of any thereof, and denies that plaintiff acquired title thereto in the manner alleged in the complaint, or any other manner, and denies that plaintiff's predecessors in title have owned said lands, occupied them, paid taxes thereon or improved them.

He admits that on July 20th, 1936, he obtained from George W. Neal, Commissioner of State Lands, a deed by which the State of Arkansas conveyed to him the following described lands, situated in Desha County, Arkansas, which are a part of those claimed by the plaintiff, to-wit:

The Northwest Quarter (NW $\frac{1}{4}$) of Section 17; and the West Half of the Southwest Quarter (W $\frac{1}{2}$ SW $\frac{1}{4}$) of Section 17, all in Township 7 South, Range 2 East.

He also admits that on March 21, 1938, he obtained from Otis Page, Commissioner of State Lands, a deed by which the State of Arkansas conveyed to him the following described lands, situated in Desha County, Arkansas, which are a part of those claimed by the plaintiff, to-wit:

The South Half of the Southwest Quarter (S $\frac{1}{2}$ SW $\frac{1}{4}$) of Section 8, Township 7 South, Range 2 East.

These deeds were properly executed and recorded in the office of the Recorder of Desha County.

He admits that the lands were sold to the State in 1933 [fol. 10] for non-payment of the taxes for the year 1932, but denies that the sales to the State, the certification of the lands to the State Land Commissioner and the deeds to the defendant are illegal or void, and denies that they constitute a cloud on plaintiff's title. He denies that the forfeiture, tax sale and deeds are void for the reasons alleged in the complaint, or for any other reason.

He admits that he occupied the land for the years 1937 and 1938, but denies that the land had a reasonable rental value of \$5.00 per acre. He denies that the land had any

rental value whatsoever for 1937 and states that any rental value that it may have had in 1938 or 1939 is due solely to improvements made on the land by this defendant, as hereinafter alleged, and that without said improvements the lands would have been worthless. He denies that plaintiff is entitled to have a receiver appointed and that such an appointment would be proper.

He denies that the land has been in cultivation for a long number of years and states that the improvements on the property have been placed there by this defendant. Prior to defendant's occupancy, the land had not been cultivated since 1926, and had grown up in small timber, saplings, shoots, buck vines and other undergrowth and was entirely untenanted.

For further defense defendant states that he entered upon the Northwest Quarter (NW $\frac{1}{4}$) and the West Half of the Southwest Quarter (W $\frac{1}{2}$ SW $\frac{1}{4}$) of Section 17, Township 7 South, Range 2 East, under the aforesaid tax deed immediately upon its receipt, and took possession thereof and has remained in continuous, open, notorious, adverse possession of the same since that date, clearing and improving said lands, building houses thereon, cultivating such as was subject to cultivation and claiming to be the owner thereof by virtue of said tax deed. Such possession continued for more than two years prior to the institution of this suit and defendant thereby acquired title by adverse possession [fol. 11] under the two years statute of limitations, Section 8925 of Pope's Digest of the Statutes of Arkansas, which is a complete bar to plaintiff's suit against this defendant insofar as said lands are concerned. Defendant is still in possession of all the land conveyed to him by the State and this court is without jurisdiction to remove him.

For further defense, defendant states that the defects and irregularities alleged in the complaint as to the tax sale, by virtue of which defendant acquired his title, even if such defects existed, which is not admitted, were of such nature that they were cured by Act 142 of the Acts of the General Assembly for 1935, which was in effect when defendant acquired his title. Said Act had the effect of curing defendant's title and vesting the same in defendant, and created a vested right which could not thereafter be disturbed.

For further answer defendant states that plaintiff has never tendered to him the amount of taxes and cost paid

for said lands with interest thereon, and the amount of taxes paid subsequent to his purchase with interest and the value of all improvements made by him, and has never filed any affidavit of such tender as is required by Section 4663 of Pope's Digest of the Statutes of Arkansas. Defendant has heretofore in due time moved to have this action dismissed for that reason and the Court has reserved its ruling on said motion. Defendant hereby reiterates said motion and reserves the right to except thereto, if the Court's ruling should be unfavorable.

Defendant further states that in the purchase of said lands, payment of taxes thereon, and improvement thereof, he has expended the following sums, which have enhanced the value of said lands in the same amounts, to-wit:

NW $\frac{1}{4}$ & S $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 17, T. 7 S., R. 2 E.:

| | |
|---|----------|
| Purchase price paid State..... | \$241.00 |
| [fol. 12] Recording deed | 1.75 |
| State & County & Laconia Levee District taxes | 99.59 |
| Clearing 176 acres at \$15 per Acre..... | 2,640.00 |
| Rebuilding 3 houses..... | 697.30 |
| Building 1 barn | 342.20 |
| White River Drainage Dist. taxes..... | 93.90 |

Total \$4,115.74

S $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 8, T. 7 S., R. 2 E.:

| | |
|---|---------|
| Purchase price paid state..... | \$81.00 |
| White River Drainage Dist. taxes..... | 32.72 |
| Clearing 20 acres of land at \$15 per acre..... | 300.00 |

Total \$413.72

Wherefore defendant prays that the complaint herein filed be dismissed, that his title be quieted against all claims of plaintiff, that he have judgment for his costs herein expended and for all other and proper relief.

In the alternative, defendant prays that, in the event his title to the above described land should be held invalid, he have judgment in personam against the plaintiff for the amount expended as aforesaid, in the purchase, payment of taxes and improvements of the tract or tracts, as to which his title may be held invalid. That said sum be declared to be a lien upon said land and if the same be not paid within

a reasonable time to be fixed by the Court, that said lands be sold by a Commissioner appointed by the Court for the satisfaction of said lien, and for all other and proper relief.

Poe & Wood, Burke, Moore & Walker (Signed) by
G. D. Walker, Attorneys for defendant.

[File endorsement omitted.]

[fol. 13] IN CHANCERY COURT OF DESHA COUNTY

[Title omitted]

SEPARATE ANSWER OF J. H. KNOWLTON—Filed May 13, 1939

The defendant, J. H. Knowlton, for his separate answer to the complaint herein filed, as amended, states:

He denies that plaintiff is the owner of the lands described in the complaint or of any part thereof, and denies that plaintiff acquired title thereto in the manner alleged in the complaint, or any other manner, and denies that plaintiff's predecessors in title have owned said lands, occupied them, paid taxes thereon or improved them.

He admits that on the 20th day of July, 1936, he obtained from George W. Neal, Commissioner of State Lands, a deed by which the State of Arkansas conveyed to him the following described lands, situated in Desha County, Arkansas, which are a part of those claimed by the plaintiff, to-wit:

The East Half of the East Half of the Northeast Quarter (E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$) of Section 19, Township 7 South, Range 2 East. The North Part of the West Half of the Northwest Quarter (N pt. W $\frac{1}{2}$ NW $\frac{1}{4}$) of Section 20, Township 7 South, Range 2 East, being 53.33 acres; and the East Half of the Southwest Quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$) of Section 17, Township 7 South, Range 2 East.

This deed was properly executed and was recorded on the 24th day of August, 1936, in the office of the recorder of Desha County and now appears of record in Book 71 at page 510 of the Official Records of Desha County.

He admits that the land was sold to the State in 1933 for non-payment of the taxes for the year 1932, but denies that the sales to the State, the certification of the lands to the

[fol. 14] State Land Commissioner and the deed to the defendant are illegal or void, and denies that they constitute a cloud on plaintiff's title. He denies that the forfeiture, tax sale and deeds are void for the reasons alleged in the complaint, or for any other reason.

He admits that he occupied the land for the years 1937 and 1938, but denies that the land had a reasonable rental value of \$5.00 per acre. He denies that the land had any rental value whatsoever for 1937 and states that any rental value that it may have had in 1938 or 1939 is due solely to improvements made on the land by this defendant, as hereinafter alleged, and that without said improvements the lands would have been worthless. He denies that plaintiff is entitled to have a receiver appointed and that such an appointment would be proper.

He denies that the land has been in cultivation for a long number of years and states that the improvements on the property have been placed there by this defendant. Prior to defendant's occupancy, the land had not been cultivated since 1926, and had grown up in small timber, saplings, shoots, buck vines and other undergrowth and was entirely untenantable.

For further defense defendant states that he entered upon said land under the aforesaid tax deed immediately upon its receipt, and took possession thereof and has remained in continuous, open, notorious, adverse possession of the same since that date, clearing and improving said lands, building houses thereon, cultivating such as was subject to cultivation and claiming to be the owner thereof by virtue of said tax deed. Such possession continued for more than two years prior to the institution of this suit and defendant thereby acquired title by adverse possession under the two-year statute of limitations, Section 8925 of Pope's Digest of the Statutes of Arkansas, which is a complete bar to plaintiff's suit against this defendant. Defendant is still in possession of said land and this court is without jurisdiction to remove him.

[fol. 15] For further defense, defendant states that the defects and irregularities alleged in the complaint as to the tax sale, by virtue of which defendant acquired his title, even if such defects existed, which is not admitted, were of such nature that they were cured by Act 142 of the Acts of the General Assembly for 1935, which was in effect when defendant acquired his title. Said Act had the effect of

curing defendant's title and vesting the same in defendant, and created a vested right which could not thereafter be disturbed.

For further answer defendant states that plaintiff has never tendered to him the amount of taxes and cost paid for said lands with interest thereon, and the amount of taxes paid subsequent to his purchase with interest and the value of all improvements made by him, and has never filed any affidavit of such tender as is required by Section 4663 of Pope's Digest of the Statutes of Arkansas. Defendant has heretofore in due time moved to have this action dismissed for that reason and the Court has reserved its ruling on said motion. Defendant hereby reiterates said motion and reserves the right to except thereto, if the Court's ruling should be unfavorable.

Defendant further states that in the purchase of said lands, payment of taxes thereon, and improvement thereof, he has expended the following sums, which have enhanced the value of said lands in the same amount, to-wit:

N. Pt. W 1/2 NW 1/4 Sec. 20, T. 7 S, R 2 E, 53.33 acres

| | |
|---|---------------|
| Purchase price paid State..... | \$53.33 |
| Rebuilding two houses..... | 550.00 |
| Sinking one pump..... | 25.00 |
| Building one barn..... | 125.00 |
| Building out-buildings..... | 50.00 |
| Clearing 40 acres, \$25 per acre..... | 1000.00 |
| White River Drainage District taxes for 1938..... | 22.17 |
| [fol. 16] Laconia Levee Dist. tax for 1935..... | 4.80 |
| Laconia Levee Dist. tax for 1936..... | 4.80 |
| Laconia Levee Dist. tax for 1937..... | 6.40 |
| Total..... | \$1841.50 |

In addition to the above expenditures, defendant has paid State and County taxes for the years 1936, 1937, and 1938 and Laconia Levee District taxes for 1938, the amounts of which are not presently available to defendant, but may be found in the records of Desha County and will be supplied at the trial of this cause.

E 1/2 E 1/2 NE 1/4, Sec. 19, T. 7 S, R 2 E, 26.66 acres

| | |
|---|---------|
| Purchase price paid state..... | \$26.66 |
| Clearing 25 acres at \$25 per acre..... | 625.00 |

| | |
|---|--------------|
| White river Drainage District taxes for 1938..... | 12.59 |
| Laconia Levee Dist. taxes for 1935..... | 7.20 |
| Laconia Levee Dist. taxes for 1936..... | 7.20 |
| Laconia Levee Dist. taxes for 1937..... | 2.40 |
| Total..... | \$681.05 |

In addition to the above expenditures, defendant has paid State and County taxes for the years 1936, 1937 and 1938, and Laconia Levee District taxes for 1938, the amounts of which are not presently available to defendant, but may be found in the records of Desha County and will be supplied at the trial of this cause.

E 1/2 SW 1/4 Sec. 17, T. 7 S, R 2 E, 80 acres

| | |
|--|---------------|
| Purchase price paid state..... | \$80.00 |
| Rebuilding two houses..... | 550.00 |
| Rebuilding one house..... | 350.00 |
| Sinking one pump..... | 25.00 |
| Building one barn..... | 125.00 |
| Building out-buildings..... | 50.00 |
| Clearing 70 acres at \$25 per acre..... | 1750.00 |
| [fol. 17] White River Drain. Dist. for 1938..... | 32.04 |
| Laconia Levee Dist. for 1935..... | 11.20 |
| Laconia Levee Dist. for 1936..... | 11.20 |
| Laconia Levee Dist. for 1937..... | 11.20 |
| Total..... | \$2995.64 |

In addition to the above expenditures, defendant has paid State, and County taxes for the years 1936, 1937 and 1938, and Laconia Levee District taxes for 1938, the amounts of which are not presently available to defendant, but may be found in the records of Desha County and will be supplied at the trial of the cause.

Wherefore defendant prays that the complaint herein filed be dismissed, that his title be quieted against all claims of plaintiff, that he have judgment for his costs herein expended and for all other and proper relief.

In the alternative defendant prays that, in the event his title to the above described land should be held invalid, he have judgment in personam against the plaintiff for the amount expended, as aforesaid, in the purchase, payment of taxes and improvements of the tract or tracts, as to

which his title may be held invalid. That said sum be declared to be a lien upon said land and if the same be not paid within a reasonable time to be fixed by the Court, that said lands be sold by a Commissioner appointed by the Court for the satisfaction of said lien, and for all other and proper relief.

Poe & Wood, Burke, Moore & Walker, (Signed) by
G. D. Walker, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 18] IN CHANCERY COURT OF DESHA COUNTY

[Title omitted]

**AMENDMENT TO THE ANSWERS OF J. H. WOOD AND J. H.
KNOWLTON—Filed December 12, 1939**

The defendants, J. H. Wood and J. H. Knowlton, by leave of court amend their separate answers heretofore filed in this cause by the following statements and allegations:

They reiterate the allegations in their original answers that the defects and irregularities alleged in the complaint herein as to the tax sale by virtue of which defendants acquired their titles to the respective lands held by them involved in this litigation, which defects, however, are not admitted, were of such nature that they were cured and remedied by Act 142 of the Acts of the General Assembly of Arkansas for 1935. Said Act was in full force and effect when defendants acquired their title to the lands purchased by them in the year 1936 and had the effect of vesting in these defendants a valid and indefeasible title to the lands then purchased from the State Land Commissioner, which title became a vested right in these defendants.

Defendants state that Act 264 of the Acts of the General Assembly of Arkansas for 1937 was not intended to be, and was not, retroactive in its operation, and did not affect rights acquired by these defendants under Act 142 of 1935, which said Act 264 of 1937 undertook to repeal. Defendants further state that if Act 264 of 1937 should be construed to be retroactive the same would impair and destroy the vested rights obtained by these defendants under Act 142 of 1935 by virtue of their deeds from the State Land Commissioner,

and said Act 264 of 1937 is unconstitutional and beyond the powers of the General Assembly for the following reasons:

[fol. 19] 1. It denies to these defendants equal protection of the laws guaranteed by Article II, Section 3 of the Constitution of the State of Arkansas.

2. It deprives these defendants of their property without due process of law in violation of Article II, Section 8 of the Constitution of the State of Arkansas.

3. It impairs the obligation of the contract created by the grant of the State of Arkansas to these defendants, in violation of Article II, Section 17 of the Constitution of the State of Arkansas.

4. It impairs the obligation of the Contract created by the grant of the State of Arkansas to these defendants, in violation of Article I, Section 10 of the Constitution of the United States.

5. It deprives these defendants of their property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

Defendants reiterate all the other allegations and defenses set forth in their original answers.

Wherefore, defendants pray that the complaint herein filed be dismissed, and for all other and proper relief.

Poe & Wood, Burke, Moore & Walker, (Signed) By
G. D. Walker, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 20] IN CHANCERY COURT OF DESHA COUNTY.

Transcript of Evidence

T. S. LOVETT, JR., a witness upon behalf of plaintiff, having been first duly sworn, testified as follows, to-wit:

Direct examination:

By Mr. Johnson:

Q. State your name.

A. T. S. Lovett, Jr.

Q. You are the plaintiff in this cause?

A. Yes.

Q. What is the description of the land involved in this

A. NW $\frac{1}{4}$ of SW $\frac{1}{4}$ and S $\frac{1}{2}$ of SW $\frac{1}{4}$ of Section 8; W $\frac{1}{2}$ of Section 17; a parcel of land beginning 10 chains west of the section corner common to 17, 18, 19 and 20 and thence South 26.67 chains, thence East 30 chains, thence North 26.67 chains, thence West 30 chains to point of beginning; all in Township 7 South, Range 2 East.

Q. Whom did you derive title?

A. Alliance Trust Company.

Q. Give the date and record and page number of your deed.

A. Dated January 10, 1939, Record Book 77 page 55 in Desha County records.

Q. Of whom did the grantors obtain title and how?

A. Abe and Blanche Knowlton by foreclosure of a mortgage.

Q. Did you state that grantor obtained from Abe Knowlton? State, if you know, the date when he obtained title to the property?

A. Alliance Trust Company foreclosed Knowlton in 1929.

Q. Which one of the defendants are claiming an interest in this or any part of this land?

A. Mr. J. H. Wood, Mr. J. H. Knowlton, Mr. G. C. Harris.

Q. State specifically the description of the land each one claims?

A. Mr. J. H. Wood—S $\frac{1}{2}$ of SW $\frac{1}{4}$ Section 8, NW $\frac{1}{4}$ of Section 17; and W $\frac{1}{2}$ of SW $\frac{1}{4}$ of Section 17.

Mr. J. H. Knowlton—E $\frac{1}{2}$ of SW $\frac{1}{4}$ of Section 17 and [fol. 21] the 80 acres parcel described by metes and bounds.

Mr. G. C. Harris—NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 8.

Q. On what is this claim based?

A. Deed from the State of Arkansas. Based on forfeiture to the State for the nonpayment of taxes for year 1932.

Q. What year did this land forfeit for taxes?

A. 1932.

Q. Did it all forfeit the same year?

A. Yes.

Q. To whom was it sold on this forfeiture by the Collector of Desha County?

A. State of Arkansas.

Q. When was it deeded to the State of Arkansas?

A. July 18th, 1936.

Q. What is the date of the deeds to the respective tax claimants mentioned above?

A. State of Arkansas to J. H. Knowlton, dated July 20th, 1936. State of Arkansas to J. H. Wood, dated July 29th, 1936 for the NW $\frac{1}{4}$ and W $\frac{1}{2}$ of SW $\frac{1}{4}$ of Section 17; State of Arkansas to J. H. Wood, dated March 21st, 1938, S $\frac{1}{2}$ of SW $\frac{1}{4}$ of Section 8. State of Arkansas to G. C. Harris, April 26th, 1938.

Q. Will you attach and make a part of your deposition statement showing the assessed value and amount for which each particular tract of land involved in this suit was sold by the Collector to the State?

A. Yes.

Q. And also showing the taxes for exact years up to the date the State sold to these defendants?

A. Yes.

Q. State whether you contacted these claimants in person before filing this suit and made a tender of their taxes and improvements?

A. Contacted Mr. Wood and Mr. Knowlton in person and [fol. 22] tendered them the amount of taxes, interest and improvements but was unable to find Mr. Harris. However, I had informed another party to tell Mr. Harris that I would pay him taxes and improvements and all sums required for a quitclaim deed to the land he was claiming.

Q. Did they refuse it?

A. Yes.

Q. Were either one of these defendants on and in possession of the land at the time you made these contacts?

A. No.

Q. Who did you find, if anyone, in possession of the land?

A. Found Mr. Flynn, A. C. Flynn living in the house on the NW $\frac{1}{4}$ of Section 17. Did not see anyone else on the land.

Q. Were they or any of them claiming any interest in the lands at the time you contacted them?

A. No.

Q. Did you make a contract at the time with Mr. A. C. Flynn to remain in possession of the lands which he held and cultivate at least a part of it for the year 1939?

A. I advised Mr. Flynn that I had purchased the lands from the original owner and that I would like for him to cultivate the lands for me in 1939. I gave him permission to remain in the house in which he was living.

Q. Is he in possession of this land now? Or any part of it?

A. Yes, he is still living in the house.

Q. Just what description does he hold?

A. NW 1/4 of NW 1/4 of Section 17.

Q. State whether you or your attorney conferred with the attorneys for the defendant to the agreement with Mr. Flynn with reference to working the land for 1939 and accounting for rents according to the direction and decree of the court?

A. Mr. A. J. Johnson, my attorney, contacted the defendants' attorneys, Burke, Moore and Walker, in regard to Mr. [fol. 23] Flynn cultivating the land in 1939 under orders of the court in order that rents for that year might be turned over to the successful party. I considered myself in possession of this land at this time by virtue of my agreement with Mr. A. C. Flynn who apparently had renounced his claim to Wood, Knowlton and Harris to this land and was holding under me. However, when the defendants' attorney advised us that Mr. Wood and Mr. Knowlton financially responsible and there would be no difficulty about the rents for the year 1939, I agreed to release the land to them and let them farm it for 1939.

Q. State, if any, what assurances were made by the attorneys to your request and what instruction you gave Mr. Flynn?

A. As stated above the attorneys advised that Mr. Wood and Mr. Knowlton were financially responsible so I advised Mr. Flynn they would work the land in 1939 but he could remain in the house and work a small crop also.

Q. State in detail whether or not the lands involved in this suit were improved and in cultivation at the time you purchased them?

A. A few days after I purchased these lands from the Alliance Trust Company I went over and examined them. I do not know where the separate descriptions are but the great majority of this land was all open and had no stumps or any sign of any recent clearing on it. All the houses I saw showed no signs of any recent improvements on them. They were all built roughly. None of the lumber was new.

Attorney Warren Wood reserves the right to examine the witness before the case is closed.

[fol. 24]

EXHIBIT "A"

T. S. Lovett, Jr., Lands in Sections 8, 17, 19 & 20 Township 7 South, Range 2 East:

Certified to the State of Arkansas on July 18, 1936, after having been sold for the non-payment of the 1932 taxes, as follows:

| Part of Section | Sec. | Acres | Tax | Total Tax, Pen. & Cost.* |
|---|------|--------|---------|-----------------------------|
| N $\frac{1}{4}$ SW 1/4..... | 8 | 80.00 | \$8.01 | \$9.11 |
| S $\frac{1}{2}$ SW 1/2..... | 8 | 80.00 | 10.68 | 12.04 |
| W $\frac{1}{2}$ | 17 | 320.00 | 51.26 | 56.68 |
| E $\frac{1}{4}$ E $\frac{1}{4}$ NE 1/4..... | 19 | 26.66 | 4.81 | 5.59 |
| N. Pt. W $\frac{1}{2}$ NW 1/4..... | 20 | 53.33 | 8.01 | 9.11 |
| | | | <hr/> | <hr/> |
| | | | \$82.77 | \$92.53 |

Following taxes paid on Lovett lands as follows:

No taxes paid on NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 8 T. 7 S. R. 2 East, 1938 taxes delinquent.

Taxes Paid on S $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 8, T. 7 S. R. 2 East, as follows:

| White River Dr. | Date paid | By Whom paid | Amount |
|---------------------|---------------------|-----------------|---------|
| 1937..... | Jan. 10, 1939..... | J. H. Wood..... | \$32.72 |
| General Taxes | | | |
| 1937 tax..... | April 5, 1938..... | J. H. Wood..... | 20.59 |
| 1936 tax..... | April 10, 1937..... | J. H. Wood..... | 21.38 |
| Laconia Levee | | | |
| 1937 tax..... | April 5, 1938..... | J. H. Wood..... | 28.80 |
| 1936 tax..... | April 10, 1937..... | J. H. Wood..... | 28.80 |
| 1935 tax..... | Oct. 1, 1936..... | J. H. Wood..... | 28.80 |
| Cost on Prior Years | Oct. 14, 1936..... | J. H. Wood..... | 4.40 |

1938 taxes on above land delinquent.

[fol. 25] Taxes Paid by J. H. Knowlton on the following lands to-wit:

E $\frac{1}{2}$ SW $\frac{1}{4}$, 80 acres, Sec. 17, E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$, 26.66 acres, Sec. 19, and N. Pt. W $\frac{1}{2}$ NW $\frac{1}{4}$, 53.33 acres, Sec. 20, all in Township 7 South, Range 2 East, Desha County, Arkansas, as follows:

| Year | General Tax | Laconia Levee | White River Dr. | Date Paid |
|--------------------------|-----------------------------|---------------|-----------------|----------------|
| 1938..... | \$14.50 | \$20.00 | Delinquent | April 3, 1939 |
| 1937..... | 14.28 | 20.00 | | March 25, 1938 |
| 1937..... | | | | Dec. 31, 1938 |
| 1936..... | 14.84 | 23.20 | None Levied | March 27, 1937 |
| 1935..... | None Levied (State Land) | 23.20 | " " | Oct. 1, 1936 |
| Cost on prior years..... | 6.60 | | | Oct. 12, 1936 |
| Totals... | | | | |

[fol. 26]

EXHIBIT "B"

Grantor: F. B. Beall, Commissioner in Chancery, to The Alliance Trust Company, Limited. Record of Desha County, Arkansas, Record 49, Page 473. Commissioner's Deed. Dated April 12, 1929. Filed April 15, 1929 at 4:00 P. M.

Grantee: ____.

Consideration: \$10,000.00—Paid.

Granting Clause: Regular.

Conveys: The West half of Section 8, except E $\frac{1}{2}$ NE $\frac{1}{4}$ thereof; West half of Section 17; SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 17; 80 acres in Sections 19 and 20, described as beginning at a post standing 10 chains West of Section corner common to Sections 17, 18, 19 & 20, thence South 26.67 chains to a stake; thence East 30 chains to a post; thence North 26.67 chains to the Section line between Sections 17 and 20, thence West along Section line, 30 chains to beginning. Township 7 South, Range 2 East, containing 740 acres, more or less.

Habendum: Regular.

Execution: Regular.

Acknowledgment: Regular, in open Court on April 15, 1929. And F. B. Beall, as Commission in Chancery before Fred W. Kellogg, Notary Public, Desha County, Arkansas, on April 15, 1929. (Seal attached.)

Recites: That land was sold under the order and decree of the Desha Chancery Court, dated March 5, 1929, in the case of The Alliance Trust Company, Limited, Plaintiff, against Abraham Knowlton, et al., (No. 3339), after due [fol. 27] advertisement, sale confirmed at the April therm of court.

Deed Endorsed: "Presented, examined, acknowledged, approved and sale confirmed this 15th day of April, 1929 E. G. Hammock, Chancellor."

Abstract of title introduced in evidence withdrawn and foregoing instrument substituted by Plaintiff. Defendants agree it is true copy of abstract of title relating to deed set forth but do not waive their objections to introduction of abstract.

[fol. 28]

EXHIBIT "C"

D. 1631

Quit Claim Deed

This Instrument Witnesseth, that the Alliance Trust Company, Limited, a corporation of Dundee, Scotland, for and in consideration of the sum of Five Hundred and Twenty Dollars (\$520.00), cash in hand paid, receipt of which is hereby acknowledged, has sold, transferred and conveyed and does by these presents sell, transfer, quit-claim and convey unto T. S. Lovett, Jr., of Star City, Arkansas, and unto his heirs and assigns, the following described real estate in Desha County, Arkansas, to-wit:

The Northwest Quarter of South West quarter of Section Eight (8); South Half of South West Quarter of Section Eight (8); West Half of Section Seventeen (17); A parcel of land described as follows: Commencing at a post ten chains West of section corner common to Sections 17, 18, 19 and 20; thence South 26.67 chains to a stake; thence East 30 chains to a post; thence North 26.67 chains to section line between said sections 17 and 20; thence West along said section line 30 chains to place of beginning; said tract containing 80 acres. All in Township Seven (7), Range Two (2) East and conta-ing Five Hundred and Twenty (520) Acres, more or less.

To Have and to Hold unto the said T. S. Lovett, Jr., and unto his heirs and assigns forever; together with the privileges, appurtenances and improvements thereupon situate, appertaining and thereunto belonging.

In Witness Whereof said The Alliance Trust Company, Limited, has caused this instrument to be executed for it and in its corporate name by Robert Ralston, its Attorney-in-fact, whose authority is duly acknowledged and recorded in book 77 page 29 of records in the office of the Clerk of the Circuit Court of Desha County, Arkansas, this 10th day of January, A. D., 1939.

The Alliance Trust Company, Limited, by Robert
[fol. 29] Ralston, Its Attorney-in-Fact.

Revenue Stamp.

STATE OF TEXAS,
County of Dallas:

This day personally appeared before me, the undersigned, a duly commissioned, qualified and acting Notary Public within and for said County and State, the within named Robert Ralston, to me personally known, Attorney-in-fact for said The Alliance Trust Company, limited, the grantor in the above and foregoing deed, who acknowledged that, being authorized so to do, he signed, executed and delivered the foregoing instrument on the day and year therein mentioned, for and on behalf of said corporation, for the uses, purposes and considerations therein expressed and set forth; and I do hereby so certify.

Witness my hand and official seal this 11th day of January, A. D., 1939.

Elfa C. Cameron, Notary Public. (Seal.)

The foregoing instrument appearing as Exhibit "C" is a typewritten uncertified copy in the original deposition and not the original deed.

[fol. 30] N. D. NEWTON, a witness upon behalf of the plaintiff, having been first duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. Johnson:

- Q. State your name.
A. N. D. Newton.
Q. What official position do you hold?
A. County Clerk of Desha County, Arkansas.
Q. As the County Clerk you have charge of the assessment records?
A. Yes, sir.
Q. Mr. Newton, the lands involved in this law suit are described as follows: NW $\frac{1}{4}$ of SW $\frac{1}{4}$ Section 8, S $\frac{1}{2}$ of SW $\frac{1}{4}$ Section 8, W $\frac{1}{2}$ of Section 17, a parcel of land described as follows: Commencing at a post standing 10 chains west of the section corner common to sections 17, 18, 19 and 20, thence South 26.67 chains, thence East 30 chains to a stake, thence North 26.67 chains to the section line between said section 17 and 20, thence West along

said section line 30 chains to the place of beginning, all in Township 7, South, Range 2 East, containing 5.22 acres. I wish you would turn, if you have before you, to the assessment record and read from that record what description, or how this particular land was assessed, the value of it as effected in 1932?

A. N $\frac{1}{2}$ of SW $\frac{1}{4}$ Section 8, 80 acres, value \$300.00.

Q. Whose name is it in?

A. Abe Knowlton.

Q. Now give the assessment record of the other tracts?

A. S $\frac{1}{2}$ of SW $\frac{1}{4}$ Section 8, 80 acres, Value \$800.00, assessed in Abe Knowlton, NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 8, assessed in N $\frac{1}{2}$ SW $\frac{1}{4}$ Section 8, 80 acres, value \$300.00, W $\frac{1}{2}$ of Section 17, 320 acres, value \$1920.00.

[fol. 31] Q. Mr. Newton, the metes and bounds description is land situated in Sections 19 and 20 as indicated on a plat which I hand you herewith. (Plat handed to Mr. Newton.) Please refer to the record and see how that particular land is described?

A. Section 8 $\frac{1}{2}$

Q. No, Section 19 and 20.

A. E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$, 26.66 acres, value \$180.00.

Q. Does your record also show the South part of NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 19 Township 7 South, Range 2 East, 40 acres?

A. Yes, sir.

Q. Does your record also show SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 19 Township 7 South Range 2 East, 40 acres?

A. Yes, sir.

Q. As to that land in Section 20, how is it assessed?

A. Abe Knowlton—North part W $\frac{1}{2}$ NW $\frac{1}{4}$ Section 20 Township 7 South Range 2 East, 53.32 acres, value \$300.00.

Q. Does your record also show N $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$ Section 20, 40 acres, \$100.00 assessed?

A. Yes, sir, that is the NE $\frac{1}{4}$. I thought I was testifying to it.

Q. Refer to the assessment on Section 19 SE $\frac{1}{4}$ NE $\frac{1}{4}$. Is that a lap or double assessment on the E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ Section 19?

A. Yes, sir, that is a lap.

Q. It would also be a double description as NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 19?

A. I am not sure about that. Possibly so.

Q. When was that record filed with you, Mr. Newton?

A. This assessment?

Q. Yes, sir. August 15th, 1932.

A. Yes, sir, I guess that is right.

Q. I am going to have Tom make a plat and enter it on the record. Will that be all right Mr. Wood?

Mr. Wood: Yes, sir, that will be all right with some [fol. 32] general objections. You allege the specific property that each defendant is claiming an interest in. Looks like it is a more definite description than your general description. The general description looks a little more vague and possibly to a better advantage from our standpoint. We are not using all lands, and these specific descriptions, that is the only thing we are interested in, just the description involved here. Let Tom make a plat for record. (Plat made a part of record and marked Exhibit A.)

Mr. Johnson:

Q. Mr. Newton, please refer now to your tax book for 1932. I wish you would look, first before you look at the land, at the date the record was filed or delivered to the collector.

A. This right here?

Q. Yes, that book.

A. 16th day of January, 1933.

Q. 16th day of January, 1933. What is that date attached to there? Where do you get that date?

A. I am reading from the Clerk's warrant.

Q. Clerk's warrant. Other words that is the date the clerk attached his warrant to the tax book for the taxes of 1932?

A. Yes, sir, that is right.

Q. Mr. Newton, the book then was delivered either on or after that date?

A. The book has always been delivered on the date provided by law, the first Monday in January, then the second Monday, and third Monday, then the law was changed to February.

Q. You didn't remember yourself?

A. I satisfied my mind as to the law and always delivered it.

Q. You don't know now as to the day the 1932 tax book was ready? Nothing else in this book on the date except as is in this book?

A. No, sir.

[fol. 33] Q. Turn in this book to Section 8-7-2. Now was the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 8-7-2 sold for taxes for 1932?

A. N $\frac{1}{2}$ SW $\frac{1}{4}$ which included that description was sold.

Q. In other words, it was marked delinquent on this book?

A. Yes, sir.

Q. Was the S $\frac{1}{2}$ SW $\frac{1}{4}$ Section 8-7-2 marked delinquent?

A. Yes, sir.

Q. Was the W $\frac{1}{2}$ Section 17-7-2 marked delinquent?

A. Yes, sir.

Q. Look to the lands in Section- 19 and 20 described by the plat which we have here, which gives a metes and bounds description and tell me just how it appears on the tax books?

A. E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ Section 19, 26.66 acres.

Q. That was marked delinquent?

A. Yes, sir.

Q. How does the South part NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 19 appear on that record?

A. I believe it appears to be delinquent for previous years.

Q. Had it been previously sold?

A. I would have to check that.

Q. That would indicate what, that it had been sold to the State?

A. Not necessarily so. There was no tax charge on this description for that year.

Q. What other check would account for no extension except that it had been sold to the state?

A. Nothing that I know of.

Q. Does the SE $\frac{1}{4}$ NE $\frac{1}{4}$ show no extension?

A. No, sir.

Q. No assessment against that either?

A. Not of 19.

Q. No tax extension of SE $\frac{1}{4}$ NE $\frac{1}{4}$ for that year?

A. No, sir.

[fol. 34] Q. That would indicate that it had been sold to the State?

A. Yes, sir.

Q. Go to the part in Section 20, that part involved in this suit, of the description, was it returned delinquent?

A. North part *W $\frac{1}{2}$ NW $\frac{1}{4}$, 53.33 acres, assessed at \$300.00 *Description changed to "W $\frac{1}{2}$ NW $\frac{1}{4}$ " and initialed "L. M."

Q. Now turn to the delinquent list you have before you. That is called the list and notice if sale of delinquent lands?

A. Yes, sir.

Q. Do you keep, Mr. Newton, a separate book of lands sold to individuals? In other words, when you make a sale do you record the lands after the sale in the record book?

A. No, sir.

Q. The record you have before you then is the record of the delinquent lands as returned by the sheriff to you, and also a record of the sale both to the individuals and the state, and you keep no separate record of the transaction sold then in that book?

A. No, sir. That is all.

Q. Turn to the list in 1933 for the taxes of 1932, this is it, look into the record and see what date the collector certified it to you? Reading from the record first, is there any certificate by the collector on the list as recorded in the record that you are testifying from?

A. No, sir.

Q. Any certificate by the collector?

A. No, sir.

Q. Then the record discloses no date or certificate by the collector at all?

A. No, sir.

Q. Does your record here show the date on which that list was filed by him with you?

[fol. 35] A. No, sir. That is the sale record.

Q. That is the only record as made out by the collector?

A. Yes, sir.

Q. When you record this list that is your record?

A. Yes, sir.

Q. Is there any certificate by the clerk certifying that he scrutinized and compared the collector's list and found it a correct list of delinquent lands returned in 1933?

A. No, sir.

Q. I wish you would read into the record, or permit me to read, the certificate?

A.

CERTIFICATE

STATE OF ARKANSAS,
County of Desha:

I, N. D. Newton, County Clerk in and for the county of Desha, State of Arkansas, do hereby certify that on the 12th day of June, 1933, said date being the second Monday in June, 1933, said date being the second Monday in June, 1933, and the time fixed by law for the sale of lots, lands and parts of lots for taxes at the hour of 10:00 A. M., I did attend, at the courthouse of said county at Arkansas City, the sale of lands and lots and parts of lots delinquent for taxes for the year 1932 and previous years, that at the foregoing pages, one to fifty-seven, contain a full, true and correct list of lands, lots and parts of lots with the taxes for the year 1932 and previous years and penalties and cost due thereon, that was sold by the collector of Desha County to private individuals and to the State of Arkansas on said day in June, 1933, that said lands and lots and parts of lots were returned delinquent for the taxes for 1932 and previous years by the collector of Desha County on the 8th day of May, 1933, and were advertised for sale for taxes, penalty and cost in the Desha County Democrat, printed and published at Dumas, Desha County, and the McGehee Times, printed and published at McGehee, in the Desha [fol. 36] County Democrat in the issues of May 18th and May 25th, 1933, and in McGehee Times in the issues of May 18th and June 1st, 1933, and testify I have set my hand and affixed the official seal of said office this 12th day of June, 1933.

N. D. Newton, Clerk of Desha County, Arkansas.

Q. That is the only certificate of writing you have in this record?

A. Yes, sir.

Q. This record shows that the lands we are talking about were sold to whom?

A. State.

Q. S $\frac{1}{2}$ SW $\frac{1}{4}$ Section 8?

A. State.

Q. W $\frac{1}{2}$ of Section 17?

A. State.

Q. E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ Section 19 sold to whom?

A. State.

Q. North part *W $\frac{1}{2}$ NW $\frac{1}{4}$, 53.33 acres?

A. State.

Q. Mr. Newton, refer to your county court record showing proceedings of the levying court in levying the taxes for 1932. How many Justices of Peace did you have in the county at that time, do you remember?

A. Let's see, we had 15 or 18.

Q. The record shows how many present?

A. 15.

Q. That would be a majority of the court?

A. Yes, sir.

Q. What day did the court meet?

A. November 14th.

Q. What school district is this land?

A. District No. 4 is my opinion. They have had several up there.

[fol. 37] Q. Refer to the tax record, Mr. Newton, showing how the lands are assessed and charged?

A. Road District 1, School District 4, School District tax 7 mills.

Q. Refer to the court levying book and see if there is a tax in school district 4?

A. Yes, sir.

Q. Read into the record the part your record shows?

A. On motion of M. A. Bridwell, seconded by Mason, and unanimously carried, 7 mills were voted for school purposes for the current year on each and every dollar of the assessed value of real and personal property and railroads within said school district. Esquire Bridwell, Mason, Moss, Burnett, Dobson, Bicker, Petty, Defer, Bryan, Gibson, Warrick, James Matson, Newton, and Lagrone voting aye, Nays none.

Mr. Johnson: That is all.

Mr. Wood: No questions.

Mr. Johnson:

Q. What record is this I hand you, lands delinquent for taxes of what year?

A. 1929.

Q. Refer to this record, Mr. Newton, with reference to

* Description changed to "W $\frac{1}{2}$ NW $\frac{1}{4}$ " and initialed "L. M."

the South part NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 19-7-2, SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 19, does this record show that these two pieces of land forfeited for 1929?

A. Yes, sir.

Q. Was this land in the state, still in the state in 1932?

A. It was still delinquent in 1932, yes sir.

[fol. 38]

EXHIBIT "A"

Deed No. 51854

For Forfeited Lands Sold

The State of Arkansas, to all to whom these presents shall come, Greeting:

Know Ye, That, Whereas, the following described lands situated in the County of Desha, in the State of Arkansas, were forfeited and sold to the State of Arkansas, at a County Tax Collector's sale for non-payment of the taxes due thereon for the year set forth below, to-wit:

| Parts of Section | Sec. | Twp. | Range | Acres | 100ths | Year for which Forfeited |
|----------------------------------|------|------|-------|-------|--------|--------------------------------|
| NW 1/4 & W $\frac{1}{2}$ SW 1/4. | 17 | 7 S | 2 E | 240 | 00 | 1932 |

And, Whereas, after the expiration of the period of two years from the date of such Collector's Sale, provided by law for the redemption of said land, vide Sections 10096 to 10104, inclusive of Crawford' & Moses' Digest of the Statutes of Arkansas, the said lands, remaining unredeemed, were duly certified to the office of the Commissioner of State Lands of Arkansas, by the County Clerk of said County, and the same now appear on the books of the State Land Office of said State as vacant and subject to sale;

And Whereas, J. W. Wood having applied to purchase the same, and having paid into the State Treasury and/or the Commissioner of State Lands in the sum of Two Hundred Forty Dollars and no Cents, the amount required to purchase said lands in accordance with the requirements of Act No. 129 of the Acts of the General Assembly of the State of Arkansas, approved March 13, 1929, and having otherwise fully complied with the provisions and require-

ments of said Act, and having paid to the Commissioner of State Lands the further sum of no Dollars and no Cents, expenses incurred by the State under the Provisions of Act No. 296 of the General Assembly of the State of Arkansas, [fol. 39] approved March 29, 1929, and/or Act No. 119 of the General Assembly of the State of Arkansas, approved March 19, 1935, making, in the aggregate the sum of Two Hundred forty Dollars and no Cents; the full amount necessary for the purchase of said land.

Now, Therefore, Know Ye, That I, Geo. W. Neal, Commissioner of State Lands of the State of Arkansas, for and in consideration of the said sum of money so paid, receipt of which is hereby acknowledged, and under and by virtue of the authority in me vested by law, do, by these presents,

Grant, Sell and Convey unto the above named applicant and his heirs and assigns forever, all the right, title and interest of the ~~State of Arkansas in and to the said lands~~, or which may be hereafter acquired under the provisions of said Act No. 296 and/or said Act No. 119, in any suit now pending.

To Have and to Hold the same unto the said applicant and unto his heirs and assigns forever.

Witness My Hand and Official Seal, as such Commissioner of State Lands, this 29th day of July, 1936.

Geo. W. Neal, Commissioner of State Lands, by Lena
E. Neal, Deputy Commissioner of State Lands.
(Seal.)

| | |
|------------------------------|----------|
| Cost | \$240.00 |
| Fees under Act 296-119 | |
| Deed | 1.00 |
| | |
| Total | \$241.00 |

Certificate of Record

STATE OF ARKANSAS,
County of Desha:

I, W. M. Jackson, Clerk of the Circuit Court and Recorder for the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 15th day of Oct., A. D., 1936 at 11 o'clock A. M. and the same is now duly recorded with the acknowledgment and certificate thereon in Record Book 72 Page 70.

[fol. 40] In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court this 15th day of Oct. A. D. 1936.

W. M. Jackson, Clerk. (Seal.)

[fol. 41]

EXHIBIT "B"

Deed No. 51595

For Forfeited Lands Sold

THE STATE OF ARKANSAS:

To All to Whom These Presents Shall Come—Greeting:

Know Ye, That, Whereas, the following described lands situated in the County of Desha in the State of Arkansas, were forfeited and sold to the State of Arkansas, at a County Tax Collector's sale for non-payment of the taxes due thereon for the year set forth below, to-wit;

| Parts of Section | Sec. | Twp. | Range | Acres | 100ths | Year for which Forfeited |
|------------------------------------|------|------|-------|-------|--------|--------------------------------|
| W $\frac{1}{4}$ SW 1/4 NE 1/4..... | 17 | 78 | 2E | 20 | 00 | 1920 |
| E 1/4 E $\frac{1}{4}$ NE 1/4..... | 19 | 78 | 2E | 26 | 66 | 1932 |
| N. pt. W $\frac{1}{4}$ NW 1/4..... | 20 | 78 | 2E | 53 | 33 | 1932 |
| E $\frac{1}{2}$ SW 1/4..... | 17 | 78 | 2E | 80 | 00 | 1932 |

And, Whereas, after the expiration of the period of two years from the date of such Collector's Sale, provided by law for the redemption of said land, vide Sections 10096 to 10104, inclusive of Crawford and Moses' Digest of the Statutes of Arkansas, the said lands, remaining unredeemed, were duly certified to the office of the Commissioner of State Lands of Arkansas, by the County Clerk of said County, and the same now appear on the books of the State Land Office of said State as vacant and subject to sale;

And Whereas, J. H. Knowlton having applied to purchase the same, and having paid into the State Treasury and/or the Commissioner of State Lands the sum of One Hundred seventy nine dollars and ninety nine cents, the amount required by purchase said lands in accordance with the requirements of Act No. 129 of the Acts of the General Assembly of the State of Arkansas, approved March 13, 1929, and having otherwise fully complied with the provisions and re-

quirements of said Act, and having paid to the Commissioner [fol. 42] of State Lands the further sum of no Dollars and no Cents, expenses incurred by the State under the provisions of Act No. 296 of the General Assembly of the State of Arkansas, approved March 29, 1929, and/or Act No. 119 of the General Assembly of the State of Arkansas, approved March 19, 1935, making in the aggregate the sum of One hundred seventy nine Dollars and ninety nine Cents; the full amount necessary for the purchase of said land.

Now, Therefore, Know Ye, That I, Geo. Neal, Commissioner of State Lands of the State of Arkansas, for and in consideration of the said sum of money so paid, receipt of which is hereby acknowledged, and under and by virtue of the authority in me vested by law, do, by these presents,

Grant, Sell and Convey unto the above named applicant and his heirs and assigns forever, all the right, title and interest of the State of Arkansas in and to the said lands, or which may be hereafter acquired under the provisions of said Act No. 296 and/or said Act No. 119, in any suit now pending.

To Have and to Hold the same unto the said applicant and unto his heirs and assigns forever.

Witness My Hand and Official Seal, as such Commissioner of State Lands, this 20th day of July, 1936.

Geo. W. Neal, Commissioner of State Lands, by
Lena E. Neal, Deputy Commissioner of State
Lands. (Seal.)

| | |
|------------------------------|--------------|
| Cost | \$179.99 |
| Fees under Act 296-119 | |
| Deed | \$1.00 |
| Total | \$180.99 |

Certificate of Record

STATE OF ARKANSAS,
County of Desha:

I, W. M. Jackson, Clerk of the Circuit Court and Recorder for the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for [fol. 43] record in my office on the 24th day of Aug. A. D. 1936 at 9 o'clock A. M. and the same is now duly recorded with the acknowledgement and certificate thereon in Record Book 71 Page 510.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court this 24th day of August A. D. 1936.

W. M. Jackson, Clerk. (Seal.)

[fol. 44] IN CHANCERY COURT OF DESHA COUNTY

4419

T. S. LOVETT, JR., Plaintiff,

vs.

J. H. WOOD, J. H. KNOWLTON and G. C. HARRIS, et al.,
Defendants

DECREE—February 16, 1940

On this 16th day of February, 1940, this cause comes on for hearing before the Chancellor in Chambers, the same being heard on the agreement of the plaintiff and the defendants and their attorneys, same may be heard and a final decree entered in vacation, and comes the Plaintiff in person and by his attorney, A. J. Johnson, and comes the defendants and by their attorneys, Burke, Moore & Walker and Warren Wood, and the cause was submitted upon the complaint of the plaintiff and exhibits thereto, the defendant's motion to dismiss, the defendant's exception to plaintiff's deposition, and the separate answers of the defendants, J. H. Wood, J. H. Knowlton and G. C. Harris, and upon the depositions of the plaintiff, T. S. Lovett, N. D. Newton, County Clerk, Ben Alexander, Clarence Campbell, A. C. Flynn and W. C. Pearrow, and others who testified on behalf of the plaintiff, and depositions of J. H. Wood, J. H. Knowlton, G. C. Harris, defendants, and J. L. Britt, E. A. Watkins, E. T. Wells, and others, on behalf of the defendants, and upon consideration of the pleadings and all the testimony the Court makes the following findings of facts and declarations of law.

"The lands, title to which is in question, are part of a body of land at one time owned by one Abe Knowlton. From Abe Knowlton, title passed to the Alliance Trust Company. These lands defaulted in tax payments and were sold to the State in 1933. This sale was void for several

[fol. 45] reasons. On July 29th, 1936 J. H. Wood purchased from the State some 240 acres, and on July 20th, 1936 J. H. Knowlton purchased from the State some 160 acres of these lands. Wood, subsequently, purchased from the State other lands included in the original tract, as also did one G. C. Harris, but in reaching a decision of the case it will not be necessary to further refer to these subsequent purchases.

In January 1939 Plaintiff purchased from the Alliance Trust Company the entire tract originally owned by Abe Knowlton, and, in the same month brought this suit to cancel the deeds from the State to Wood, Knowlton and Harris, and to quiet his title in the lands.

Defendants urge as defense that Plaintiff, as a condition precedent to issuance of writ, had failed to file with the clerk his tender, and the affidavit in proof thereof, as provided in Section 4663 of Pope's Digest. The motion was dismissed for the reason since the prayer of Plaintiff's bill was for cancellation of deeds and confirmation of title, and not for possession of the land.

Defendants further plead that since their purchase of the lands from the State was effected at a time when Act 142 of the 1935 session was in full force and effect, the faults that rendered the tax sale void were cured, and for that reason they obtained a vested interest in the land that could not be destroyed by Act 264, of the 1937 legislature that repealed Act 142. Our Supreme Court has passed upon this identical question contrary to Defendant's contention.

They next say that their title has ripened by the two year statute of limitation. The evidence does not disclose such continuous and uninterrupted possession as to bring home to the Alliance Trust Company or its vendee such adverse holding.

It is the opinion of this Court that it has jurisdiction to try and determine this cause since there is no plea for possession, but for the equitable remedies of cancellation of deeds and confirmation of title.

[fol. 46] Let Judgment go in accordance with the prayer of Plaintiff and cancellation of the deeds from the State to Wood, Knowlton and Harris. J. H. Wood shall have judgment in the sum of \$259.39 for taxes paid by him; J. H. Knowlton shall have judgment for \$203.42 for taxes paid by him, with a lien impressed upon the land to secure these judgments.

The Court further finds that there is little, if any, difference in a just rental charge for use of the land by Defendants and improvements effected thereon, hence there will be no award in either instance."

It Is Therefore, Considered, Ordered and Decreed that the title to the following described lands situated in Desha County, Arkansas, to-wit:

The Northwest Quarter of Southwest Quarter of Section Eight (8); South Half of Southwest Quarter of Section Eight (8); West Half of Section Seventeen (17); a parcel of land described as follows: Commencing at a post ten chains West of Section corner common to Sections 17, 18, 19 and 20; thence South 26.67 chains to a stake; thence East 30 chains to a post; thence North 26.67 chains to section line between said sections 17 and 20; thence West along said section line 30 chains to place of beginning; said tract containing 80 acres. All in township Seven (7) South Range Two (2) East and containing 520 acres, more or less,

is in the plaintiff, T. S. Lovett, Jr., by virtue of a deed from the Alliance Trust Company and his title therein is confirmed. That the motion of defendant to dismiss for failure of the plaintiff to file affidavit of proof of tender of taxes and improvements and defendant's exceptions to plaintiff's deposition are overruled. That the sale of said land by the Clerk of Desha County to the State of Arkansas in 1933 based on the forfeiture of 1932 taxes is void for many rea-[fol. 47] sons and the deed by the Clerk of Desha County to the State of Arkansas conveying said lands by virtue of said forfeiture and sale, which deed appearing in Deed Record 71 at page 414, is void and a cloud on plaintiff's title and said deed is hereby cancelled and set aside.

It Is Further Ordered and Decreed that the defendant, J. H. Wood, shall have a judgment of \$259.39 for taxes paid by him upon the Northwest Quarter (N W $\frac{1}{4}$) and the West Half (W $\frac{1}{2}$) of Southwest Quarter (S W $\frac{1}{4}$) of Section 17; and South Half (S $\frac{1}{2}$) of Southwest Quarter (S W $\frac{1}{4}$) of Section 8, Township 7 South Range 2 East, with a lien upon said lands to secure prompt payment of said judgment.

It Is Further Ordered and Decreed that J. H. Knowlton shall have a judgment in the sum of \$203.42 for taxes paid

by him upon the East Half (E $\frac{1}{2}$) of Southwest Quarter (S W $\frac{1}{4}$) of Section 17; East Half (E $\frac{1}{2}$) of East Half (E $\frac{1}{2}$) Northeast Quarter (N E $\frac{1}{4}$) of Section 19; and North Part of West Half (W $\frac{1}{2}$) of Northwest Quarter (N W $\frac{1}{4}$) of Section 20, containing 53.33 acres; all in Township 7 South Range 2 East, with a lien upon said lands to secure prompt payment of said judgment.

The prayer of the plaintiff for rents and the prayer of the defendants for improvements are by the Court denied, and it is directed that the defendants pay the cost of this cause.

Defendants and each of them except to the finding of facts and judgment of the court and pray an appeal to the Supreme Court which is by the Court granted.

(Signed) E. G. Hammock, Chancellor.

[fol. 48] IN SUPREME COURT OF ARKANSAS

J. H. WOOD, J. H. KNOWLTON, ET AL., Appellants

v.

T. S. LOVETT, JR., Appellee.

Appeal from Desha Chancery Court

JUDGMENT—October 21, 1940

This cause came on to be heard upon the transcript of the record of the chancery court of Desha County and was argued by solicitors, on consideration whereof it is the opinion of the Court that there is no error in the proceedings and decree of said chancery court in this cause.

It is therefore ordered and decreed by the Court that the decree of said chancery court in this cause be and the same is hereby in all things affirmed with costs.

It is further ordered and decreed that said appellee recover of said Appellant J. H. Knowlton, and J. H. Wood and Lafe Solomon, sureties in the first supersedeas bond filed in this cause, and of said Appellant J. H. Wood, and J. H. Knowlton and Lafe Solomon, sureties in the second supersedeas bond filed in this cause, all his costs in this Court and the court below in this cause expended and have execution thereof.

[fol. 49]

IN SUPREME COURT OF ARKANSAS,

[Title omitted]

OPINION—October 21, 1940.

McHANEY, J.

This action was instituted by appellee against appellants to cancel the State's tax deeds issued to them, conveying the State's title to the lands described in each of three deeds, for rents and to quiet title in him. The action was begun on January 21, 1939. The complaint alleged that he was the owner of all the lands therein described, by virtue of a deed from the Alliance Trust Company in 1939, which is of record in Desha county, and that said Trust Company acquired title thereto by virtue of the foreclosure of a deed of trust executed by a former owner, which deed is of record, and that his predecessors in title have owned, occupied and paid taxes thereon for nearly a century. The land forfeited in 1933 for the non-payment of the 1932 taxes and was sold to the State. Not having been redeemed, it was certified to the State, and, in 1936, the State conveyed to appellants the three separate tracts here involved, except appellant Harris got his deed from the State in 1938. The complaint alleged ten different reasons why the forfeiture and sale to the State was void, unless cured by Act 142 of 1935. Separate answers denied the allegations of the complaint and raised the questions herein discussed.

Trial resulted in a decree for appellee in which the rents and profits owed by appellants was offset against their improvements and rendered judgments in favor of each appellant for taxes paid. As to certain of the lands—some 53 acres—it is agreed by appellants the forfeiture and sale were void for insufficient description.

For a reversal of the decree against them appellants first say that appellee has not proved title in himself. On this question the record discloses that appellee testified that he had purchased the land from the Alliance Trust Company [fol. 50] and introduced his original deed which was handed the notary and was copied as an exhibit to his testimony. He also introduced an abstract of title showing title in himself and his predecessors in title from the Government down to himself, including a commissioners deed executed and approved in the foreclosure and sale to said Trust Com-

pany. A similar practice was followed by appellants who introduced their original tax deeds from the State as exhibits to their depositions which were copied and the originals withdrawn. No objection was made by appellants in the court below as to the manner of proof of ownership of appellee until February 16, 1940, on the very day the court rendered its decree, but on that date they filed exceptions thereto. These exceptions were overruled in its decree by the court without giving any reasons therefor, but the court might well have done so because they came too late,—just as the case was submitted, whereas appellee's deposition was taken on July 15, 1939. We think the court was justified in overruling the exceptions for this reason, if for no other. We think the objection now urged is as the form of the proof and does not go to the merits of the controversy. The abstract shows title in appellee and it would work a substantial injustice to reverse the case because appellee failed to introduce the record of his deed and other muniments of title. Moreover, this is not a suit in ejectment where title must be deraigned from the Government, the State or a common source.

Appellants next contend that their title was confirmed and perfected by reason of Act 142 of 1935. This Act was repealed by Act 264 of 1937, and this suit was not filed until January 21, 1939. It is conceded that the tax sale to the State in 1933, is void unless cured by said Act 142, but, it is contended, that said Act cured the defects and irregularities alleged in the complaint, and that the State took a good and indefensible title except the tract without a valid description, because of said Act, which passed to appellants on their purchase from the State; that they acquired vested rights in [fol. 51] said lands, and that if the repealing Act is so construed as to give a retroactive effect as to rights vested before passage, it is unconstitutional and void under both the State and Federal constitutions. It is conceded by appellee that the defects and irregularities alleged are such as would not justify the court in setting the tax sale aside under said Act 142, if it were in force. We think the fallacies in the argument of appellants consist in the false assumptions that said Act 142 cured defects and irregularities in all tax sales occurring prior to the passage of the repealing Act 264 in 1937, and that appellants acquired vested rights under said Act 142, having purchased said lands in 1936, prior to its repeal. Said Act 142 provided that under conditions stated,

"the sale of any real or personal property for the non-payment of said taxes shall not hereafter be set aside by any proceedings at law or in equity because of any irregularity", etc., with a proviso the Act should not apply to suits then pending or to those brought within six months after the effective date of the Act for the purpose of setting aside such sales. Under its own terms the Act did not apply to all sales,—to pending suits and those which might be brought within six months. The Act does not profess to cure tax sales, but only that tax sales shall not be set aside by the courts because of certain irregularities and informalities, naming them. Prior to the passage of said Act 142 the courts had been setting aside tax sales because of the irregularities and informalities named therein. The Act was held valid in Carle v. Gehl, 193 Ark. 1061, 104 S. W. 2d 445. In Kosek v. Walker, 196 Ark. 656, it was held, to quote a headnote, that: "Upon the passage of Act 264 of 1937, repealing Act 142 of 1935, tax sales became subject to any attack upon them to which they were open prior to the passage of Act 142 of 1935, except where the sales were being litigated when the repealing Act 264 of 1937, was passed."

[fol. 52] Appellants attempt to distinguish Kosek v. Walker from this, because, in that case, the land was certified to the State and sold by it after the repealing Act 264 was enacted. We think this fact would make no difference, for if the sale in this would be cured by said Act 142, it would have been cured in that also, as the sale in that case was made in 1934, prior to the passage of said Act 142, and no suit was brought in this case, attacking said Act until nearly two years after its repeal. As said in Kosek v. Walker, supra, "The infirmities of the tax sale herein involved were, therefore, not cured by Act 142, and appellant's contention that Act 142 is still effective as to all tax sales made prior to the passage of said Act 264 cannot be sustained. Upon the passage of Act 264 tax sales became subject to any attack upon them to which they were open prior to the passage of Act 142 except only those sales which were being litigated when the repealing Act 264 was passed."

We think appellants acquired no greater vested interest or title to said lands than the State had, and the repeal of said Act 142 violated no constitutional right of theirs to a defense under Act 142 after its repeal. As above stated said Act did not profess in haec verba to be a curative Act, but

only that the courts should not set aside tax sales for the infirmities mentioned under the conditions stated therein.

Two other questions are argued, one relating to limitations under the plea of possession for two years and the other to the question of betterments. Both were decided against appellants on evidence that is in dispute, which we have carefully considered, and we are unable to say the findings of the trial court thereon are against the preponderance of the evidence.

The decree is accordingly affirmed.

[fol. 53] IN SUPREME COURT OF ARKANSAS

[Title omitted]

PETITION FOR REHEARING—Filed October 29, 1940

Come J. H. Wood, J. H. Knowlton and G. C. Harris, appellants in the above styled cause, and respectfully pray that the Court grant a rehearing herein for the following reasons:

1. The court erred in holding that the appellee, T. S. Lovett, Jr., proved title in himself.
2. The court erred in the following statement in its opinion: "On this question the record discloses that appellee testified that he had purchased the land from the Alliance Trust Company and introduced his original deed which was handed the Notary and was copied as an exhibit to his testimony." This statement is erroneous because it nowhere appears in the record that the original deed was introduced in evidence or copied. (Testimony of T. S. Lovett, Jr., Tr. 28-31).
3. The court erred in holding that appellants' exceptions to appellee's proof of ownership were filed too late, said exceptions having been filed in the exact manner prescribed by the applicable statutes, being Sections 5260 and 5261 or Pope's Digest of the Statutes of Arkansas.
4. The court erred in considering the abstract of title introduced by appellee which was incompetent because it was not the best evidence.

5. The court erred in holding that the title of appellants, J. H. Wood and J. H. Knowlton, to the lands purchased by them in 1936 was not cured by Act 142 of 1935.

6. The court erred in holding that the repeal of Act 142 [fol. 54] of the Acts of the General Assembly for 1935 by Act 264 of the Acts of the General Assembly for 1937 violated no constitutional rights of appellants, in contravention of Article I, Section 10, and the Fourteenth Amendment to the Constitution of the United States of America, and of Article II, Sections 3, 8 and 17 of the Constitution of the State of Arkansas.

Wherefore petitioners pray that this cause be reheard by this court and that the judgment affirming the decree of the Chancery Court of Desha County rendered herein be set aside, and that the decree of the Chancery Court of Desha County be reversed, and for all proper relief.

Burke, Moore & Walker, (Signed) by G. D. Walker,
Attorneys for Appellants.

Certificate

G. D. Walker, one of the attorneys of record for the appellants, J. H. Wood and J. H. Knowlton and G. C. Harris, does hereby certify that he has read the opinion of this court in the above entitled cause and the foregoing petition for rehearing and that he verily believes that the errors assigned in the petition for rehearing are well taken and that there is merit in said petition, and that said petition for rehearing is not filed for the purpose of vexation or delay, but in order that the court may rehear said cause for reconsideration of the errors here assigned to the end that justice may be done.

Witness my hand this 24th day of October, 1940.

(Signed) G. D. Walker.

[File endorsement omitted.]

[fol. 55] IN SUPREME COURT OF ARKANSAS

ORDER OVERRULING PETITION FOR REHEARING—November 11, 1940

Being fully advised, the petitions for rehearing in the following causes, are by the court severally overruled, viz:

6059

J. H. Knowlton, et al.

v.

T. S. Lovett, Jr.

[fol. 56] IN SUPREME COURT OF ARKANSAS

[Title omitted]

Petition for Appeal—Filed December 17, 1940

To the Hon. Griffin Smith, Chief Justice of the Supreme Court of the State of Arkansas:

Considering themselves aggrieved by the final decision of the Supreme Court of the State of Arkansas in the above entitled cause, J. H. Wood and J. H. Knowlton, the appellants above named, hereby pray that an order of appeal be entered herein, and for an order fixing the amount of the bond thereon.

ASSIGNMENT OF ERRORS

Come now the appellants above named, J. H. Wood and J. H. Knowlton, and as appellants to the Supreme Court of the United States from the judgment and decision heretofore entered herein assign as errors:

1. That the Supreme Court of the State of Arkansas erred in refusing to reverse the judgment of the Chancery court of Desha County, Arkansas, canceling the deed dated July 20, 1936, from Geo. W. Neal, Commissioner of State Lands, conveying to J. H. Knowlton the East Half, East Half, Northeast Quarter (E $\frac{1}{2}$, E $\frac{1}{2}$, NE $\frac{1}{4}$) of Section 19, Township 7 South, Range 2 East, and the East Half of the Southwest Quarter (E $\frac{1}{2}$, SW $\frac{1}{4}$) of Section 17, Township 7 South, Range 2 East, all in Desha County, Arkansas; and the deed dated July 29, 1936, from Geo. W. Neal, Commissioner of State Lands, conveying to J. H. Wood the Northwest Quarter (NW $\frac{1}{4}$) and the West Half, Southwest Quarter (W $\frac{1}{2}$, SW $\frac{1}{4}$) of Section 17, Township

7 South, Range 2 East, in Desha County, Arkansas, and in quieting title to said lands in the appellee, T. S. Lovett, Jr.

2. That the Supreme Court of the State of Arkansas erred in holding that as to the aforesaid lands the appellants, J. H. Wood and J. H. Knowlton, acquired no vested rights therein by virtue of the said deeds and of Act 142 of the Acts of the General Assembly of Arkansas for 1935, Vol. 1, page 402, which Act cured defects in the tax sales by which the State of Arkansas acquired title to said lands and was in full force and effect at the time of the execution of said deeds to appellants.

3. That the Supreme Court of the State of Arkansas erred in holding that Act 264 of the Acts of the General Assembly of Arkansas for the year 1937, Vol. 1, page 933, repealing Act 142 of the Acts of the General Assembly of Arkansas for 1935, Vol. 1, page 402, did not unconstitutionally impair the obligation of appellants' contract with the State of Arkansas for the purchase of the aforesaid lands guaranteed to appellants by Art. 1, Section 10 of the Constitution of the United States.

4. That the Supreme Court of the State of Arkansas erred in holding that the said Act 264 of the Acts of the General Assembly of Arkansas for 1937, Vol. 1, page 933, repealing Act 142 of the Acts of the General Assembly of Arkansas for 1935, Vol. 1, page 402, did not unconstitutionally deprive appellants of their property without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

5. That the Supreme Court of the State of Arkansas erred in holding that Act 264 of the Acts of the General Assembly of Arkansas for the year 1937, Vol. 1, page 933, repealing Act 142 of the Acts of the General Assembly of Arkansas for the year 1935, Vol. 1, page 402, did not unconstitutionally deny to appellants equal protection of the laws guaranteed [fol. 58] to appellants by Section 1 of the Fourteenth Amendment to the Constitution of the United States.

6. That the Supreme Court of the State of Arkansas erred in holding that Act 264 of the Acts of the General Assembly of Arkansas for the year 1937, Vol. 1, page 933, did not unconstitutionally deprive appellants of vested rights in contravention of Article 1, Section 10, of the Constitution of the

United States, and Section 1 of the Fourteenth Amendment to the Constitution of the United States.

PRAYER FOR REVERSAL

For which errors the appellants above named, J. H. Wood and J. H. Knowlton, pray that the said judgment of the Supreme Court of the State of Arkansas, dated October 21, 1940, on which rehearing was denied November 11, 1940, in the above entitled cause, be reversed as to the aforesaid lands and a judgment ordered in favor of the appellants and for costs.

(S.) J. G. Burke, Attorney for Appellants, Helena, Arkansas.

[File endorsement omitted.]

[fol. 59] IN SUPREME COURT OF ARKANSAS

[Title omitted]

ORDER ALLOWING APPEAL—Filed December 17, 1940

On this 17 day of December, 1940, on reading the petition of J. H. Wood and J. H. Knowlton, the appellants herein, praying for the issuance of an order herein allowing their appeal to the Supreme Court of the United States from the Supreme Court of the State of Arkansas, and it appearing from the said petition and the record of the above entitled cause that there was drawn in question the validity of a statute of the State of Arkansas, to-wit: Act 264 of the Acts of the General Assembly of Arkansas for 1937, Vol. 1, page 933, on the ground that the said statute impairs the obligation of contracts contrary to Article 1, Section 10 of the Constitution of the United States, and deprives appellants of their property without due process of law, and denies appellants equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States, and that the decision of this court was in favor of the validity of said statute, and that such petition together with the Assignment of Errors and Jurisdictional Statement filed herewith is a proper petition for the issuance of this order, now, therefore, it is ordered by the undersigned, the Chief Justice of the Supreme Court of the State of Arkan-

sas, that said appeal be, and the same is hereby allowed; and

It is further ordered that the appellant, J. H. Wood, execute to the appellee, T. S. Lovett, Jr., his supersedeas bond with surety to be approved by the undersigned in the sum of \$2,000.00, conditioned as required by law, that he shall prosecute said appeal to effect and that if he shall fail to [fol. 60] make his plea good, to answer all damages and costs and further conditioned to pay any amounts ultimately adjudicated against him herein; and the appellant, J. H. Knowlton, shall execute to the appellee, T. S. Lovett, Jr., his supersedeas bond with surety to be approved by the undersigned in the sum of \$2,000.00, conditioned as required by law, that he shall prosecute said appeal to effect and that if he shall fail to make his plea good, to answer all damages and costs and further conditioned to pay any amounts ultimately adjudicated against him herein; and upon the filing of said bonds and the approval thereof, this appeal shall operate as a supersedeas with respect to the judgment herein appealed from.

It is further ordered that the Clerk of this Court within forty (40) days of this date make and transmit to the Clerk of the United States Supreme Court under his hand and the seal of this court a transcript of the record herein containing a true copy of all material parts of the record herein, which shall be designated by a praecipe filed with him by any of the parties hereto.

Done this 17 day of December, 1940.

(S.) Griffin Smith, Chief Justice of the Supreme Court of the State of Arkansas.

[File endorsement omitted.]

[fol. 61] Supersedeas Bond on Appeal of J. H. Wood for \$2,000 approved and filed Dec. 17, 1940 omitted in printing.

[fol. 62] Supersedeas Bond on Appeal of J. H. Knowlton for \$1000.00 approved and filed Dec. 17, 1940 omitted in printing.

[fol. 63-64] Citation in usual form showing service on A. J. Johnson omitted in printing.

[fol. 65] IN SUPREME COURT OF ARKANSAS

RETURN TO ALLOWANCE OF APPEAL

In obedience to the commands of the within allowance of appeal I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings (as called for in praecipe) in the within entitled case, together with all things concerning same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Arkansas, in the City of Little Rock, this 13th day of January, 1941.

C. R. Stevenson, Clerk, by Frank H. Cox, D. C.
(Seal.)

[fol. 66] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 67] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

**STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION
TO PRINT ENTIRE RECORD—Filed January 22, 1941**

Come now the appellants in the above entitled cause and state that the points upon which they intend to rely in this Court in this case are as follows:

Point 1. The Statute of the State of Arkansas, to-wit: Act 264 of the Acts of the General Assembly of Arkansas for the year 1937, Volume 1, page 933, approved March 17, 1937, entitled "An Act to Repeal Act 142 of the Acts of 1935", is unconstitutional and void as repugnant to paragraph 1 of Section 10 of Article I of the Constitution of the United States in that it impairs the obligation of existing contracts of the appellants.

Point 2. The aforesaid Act of the State of Arkansas is unconstitutional and void as repugnant to Section 1 of the 14th Amendment to the Constitution of the United States in that it deprives the appellants of their property without due process of law.

[fol. 68] Point 3. The said Statute of the State of Arkansas is unconstitutional and void as repugnant to Section 1 of the 14th Amendment to the Constitution of the United

States in that it denies the appellants the equal protection of the laws.

Point 4. The Supreme Court of the State of Arkansas erred in ruling that the appellant, J. H. Wood, by his deed from the Commissioner of State Lands to him, dated July 29, 1936, conveying to him the Northwest Quarter (NW $\frac{1}{4}$) and the West Half of the Southwest Quarter (W $\frac{1}{2}$ SW $\frac{1}{4}$) of Section Seventeen (17), Township Seven (7) South, Range Two (2) East, Desha County, Arkansas, and the appellant, J. H. Knowlton, by his deed from the Commissioner of State Lands, dated July 20, 1936, conveying to him the East Half of the East Half of the Northeast Quarter (E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$) of Section Nineteen (19) and the East Half of the Southwest Quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$) of Section Seventeen (17), Township Seven (7) South, Range Two (2) East, Desha County, Arkansas, acquired no vested rights of which they were deprived by the enactment of the said Act 264 of 1937.

Point 5. The Supreme Court of the State of Arkansas erred in ruling that the aforesaid Statute of the State of Arkansas was a valid and constitutional enactment, and in affirming the judgment of the Chancery Court of Desha County, Arkansas, quieting title to the aforesaid lands in the appellee.

The appellants further represent that the whole of the record as filed is necessary for the consideration of the case except the bonds and citation upon this appeal.

J. G. Burke, Counsel for Appellants.

[fol. 69] Service of the foregoing statement and designation of the parts of the record to be printed is hereby accepted, this 18th day of January, 1941.

A. J. Johnston, Attorney for Appellee.

[fol. 70] [File endorsement omitted.]

Endorsed on Cover: Enter J. G. Burke. File No. 45,058. Arkansas, Supreme Court. Term No. 709. J. H. Wood and J. H. Knowlton, Appellants, vs. T. S. Lovett, Jr. Filed January 21, 1941. Term No. 709 O. T. 1940.

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